
JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world class justice prevails!”



ADDRESS BY

**THE HONOURABLE MR JUSTICE GARWE,
JUDGE OF THE CONSTITUTIONAL COURT OF
ZIMBABWE**

**ON THE OCCASION OF THE OFFICIAL OPENING
OF THE 2023 LEGAL YEAR**

ON

9 JANUARY 2023

AT THE HIGH COURT OF ZIMBABWE IN MUTARE

~

**THEME: PROMOTING COMPETENCE AND
QUALITY OF SERVICE TO ENHANCE PUBLIC
CONFIDENCE IN THE JUDICIARY**

Mr George Lock and Mrs Mandingwa

Mr Jonathan Chingwinyiso of the National Prosecuting Authority

Mr Peter Garwe of the Attorney General's Office

I wish to acknowledge the presence amongst us of the following:

- The **Hon. Nokuthula Matsikenyere, Minister of State for the Manicaland Province;**
- His Worship, **Mr. Simon Chabuka**, the Mayor of Mutare; herein represented by Councillor Resistance Mundembe
- Mambo **Mutasa** and Mambo **Zimunya;**
- **Brigadier-General Chitsva**, Commander 3 Infantry Brigade of the Zimbabwe National Army;
- **Commissioner Makototse**, Zimbabwe Republic Police Officer Commanding Manicaland Province;
- **Commissioner Chinobva**, Zimbabwe Prisons and Correctional Services Officer commanding Manicaland Province, herein represented by Assistant Commissioner Mabvuu
- Senior Government Officials here present;

- Members of the Law Society of Zimbabwe and National Prosecuting Authority and Attorney General’s Office,
- Members of Law Based Civic Organisations,
- The Messenger of Court and last but not least,
- The Press.

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN, on behalf of the Honourable Chief Justice of Zimbabwe and the entirety of the Zimbabwe judiciary, I extend a warm welcome to all of you to the 2023 Legal Year Opening Ceremony taking place here at the High Court of Zimbabwe in Mutare. I consider it an honour to stand before you and address you on this occasion. It is yet that time in our calendar where stakeholders involved in the administration of justice gather to mark the commencement of the legal year. The objective of this event is to create a platform through which the judiciary can account for its activities to the public from which it derives its mandate- by stating the achievements made during the course of the previous year and the challenges faced in meeting its constitutional obligations in the

preceding year. It is also a forum at which the Judiciary outlines its plans for the next twelve months.

I therefore extend a special welcome to all of you. The fact that you have found it befitting to attend this occasion is important and no doubt shows the confidence with which you attach to the administration of justice in this country.

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN, this ceremony is occurring concurrently with other opening ceremonies taking place at other courts throughout the country. The main event is being held at the Constitutional Court in Harare, where the Chief Justice, the Honourable Mr Justice Luke Malaba, is officiating and will officially open the legal year. During that ceremony, the Chief Justice will take the opportunity to address the legal profession as well as the generality of the people of Zimbabwe on the challenges that the Judiciary has experienced as well as the opportunities that lie ahead. I believe that the main ceremony is being live streamed on national television. In Bulawayo, the ceremony is taking place at the Bulawayo High Court and the Deputy Chief Justice, the Honourable Mrs Justice

Gwaunza, is presiding. In Masvingo, the ceremony is taking place at the Masvingo High Court and is being presided over by the Honourable Mrs Justice Makarau, whilst in Chinhoyi the ceremony is taking place at the Chinhoyi courthouse and is being presided over by the Judge President of the High Court, the Honourable Mrs Justice Dube.

My address is largely predicated on the main address by the Chief Justice. In his address, the Chief Justice shares with the nation the most important activities undertaken in the preceding legal year across the judiciary; the notable accomplishments, the challenges faced and what we in the judiciary intend to do in the next twelve months in order to comply with our constitutional mandate.

The year 2022 goes down in the country's judicial history as the year in which the journey to digitise operations of the courts commenced with the adoption of the Integrated Electronic Case Management System-“the IECMS”. It is also the year in which the Judiciary saw the establishment and opening of the first paperless court in Zimbabwe in the form of the stand-alone Commercial Division of the High Court. In line with the government policy of devolution as a constitutional

imperative, the Judicial Service Commission has opened new circuit courts. The Judicial Service Commission further consolidated the operations of the **Judicial Training Institute of Zimbabwe** by adopting measures that enable it to efficiently implement the programmes of organising and managing the training of judicial and support staff of the Judicial Service.

The Judiciary's efforts to attend to the quantitative aspect of court operations should not be taken to mean that it is overlooking the importance of quality of the service provided to the public. Competence and quality of service provision are equally important constitutional requirements. Failure to meet the standards of the requirements of competence and quality of justice delivery service would undermine efforts to build and maintain public confidence in the Judiciary.

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN, alive to the fact that each year ushers in a new theme which underpins the vision, operations and work of the judiciary, the theme for the judiciary this year is – **“PROMOTING COMPETENCE AND QUALITY OF**

SERVICE TO ENHANCE PUBLIC CONFIDENCE IN THE JUDICIARY”.

In an endeavour to deliver world class justice, the Honourable Chief Justice picks a theme that builds on the work undertaken in previous legal years in an effort to further develop and enhance our justice system. The Judicial Service Commission (JSC) has a constitutional mandate of promoting and protecting the independence of the judiciary and holding the institution accountable by ensuring that there is efficient, effective and transparent administration of justice of Zimbabwe as enshrined in the Constitution.

This year’s theme aims to set the wheels in motion for the coming legal year. It calls upon all of us to ask “How can competence and quality of service enhance public confidence in the judiciary?”

The theme is informed by the realisation that the Judiciary has both a legal and a moral obligation to provide quality service to the recipients of that service. The theme speaks to the understanding that provision of service has two fundamental aspects that are inter-connected.

On the one hand is the servant or duty bearer who has to perform legally prescribed duties according to prescribed objective standards set, not for his or her benefit, but for the benefit of the persons entitled to receive the service. Not only should the duty bearer act in the performance of the duties of the public office he or she occupies according to the requirements of the procedures and acts prescribed by the applicable law, he or she must do so in a manner that instils a sense of justice and fairness in the hearts of fair-minded and reasonable members of the public.

The theme therefore speaks not only to conformity with the legal requirements of the performance of duties in the provision of service to the court users in a manner that meets legitimate expectations; it also speaks to the need for constant management and monitoring of service provision to ensure that outcomes meet the standards of quality promotive of public confidence in the Judiciary.

The theme is also informed by the obligation imposed on the courts by the law that judicial officers must be competent. It is only then that the

public will have confidence in the courts and will respect the decisions coming out of the courts.

Public confidence implies widespread trust and confidence by the people in the ability of the Judiciary to adjudicate disputes fairly and impartially, without fear, favour or ill will. Generally, public confidence is a product of both how the courts dispense justice and the quality of service obtained by the people from the courts.

Section 164(1) of the Constitution of Zimbabwe provides that courts are independent and are subject only to the Constitution and the law, which they must apply impartially, expeditiously, and without fear, favour, or prejudice. **Section 164(2)** specifically requires "Members of the judiciary, individually and collectively, [to] respect and honour their judicial office as a public trust and [to] **strive to enhance their independence in order to maintain public confidence in the judicial system**". The Judicial Service Commission is required by **section 190 of the Constitution** to conduct its business in a just, fair and transparent manner. The need to ensure public confidence and trust in the judicial system is undoubtedly one of the reasons why the Judicial Service

Commission must act in a just, fair, and transparent manner. Judicial independence protects the important presumption that the Judiciary does not act on instructions of other arms of the State. This, in turn, gives effect to the impartiality of judicial officers, as they represent an objective standard upon which legal disputes can be adequately addressed.

Public confidence in the judicial system is essential for maintaining peace, order and the rule of law. When the courts make decisions, and are seen and allowed to perform their duties with the independence, impartiality and expedition required by the law for the resolution of disputes, public confidence in the judicial service will no doubt be enhanced.

The duty of persons who are part of the judicial service is to provide the service to every person seeking it in accordance with the law with the necessary speed and within a reasonable time with due respect to the dignity of the person concerned. It is not part of the duties of officers in the Judiciary service to satisfy personal needs of court users. Where one is aggrieved by a decision made by a court it is important to rely

on the available legal processes for remedy. Insulting the courts and judicial officers will not help to have the order set aside. Such conduct has the effect of undermining public confidence in the Judiciary. The Judiciary is bound by the law to resist the often insidious pressure to make decisions that play to the gallery, contrary to the dictates of the facts and the applicable law.

Similarly, when the National Prosecuting Authority exercises its mandate to decide whether to prosecute a matter or to decline to prosecute a matter, this is a mandate provided for in the Constitution and it is improper for other institutions, including the Judiciary, the Police and the Zimbabwe Anti-Corruption Commission, to attempt to interfere with the organ.

The Judiciary is the last line of defence when it comes to the protection of fundamental human rights. Where the Judiciary makes a decision on a matter, whether it is the granting of bail or refusal to do so, or whether it is the conviction of a suspect or his or her acquittal in criminal proceedings, it would be highly improper for other institutions to purport to interfere with the process or make extra-judicial comments,

without legal basis, imputing corruption in the Judiciary. Whilst cooperation between State entities is encouraged to enhance efficiency in the criminal justice system, the independence of the Judiciary must be respected, consistent with the dictates of the constitutional doctrine of separation of powers.

Failure to deal with allegations of corruption in the courts may result in the loss of public confidence in the criminal justice system. It is important that the public is kept abreast of developments in the fight against corruption. Currently there are **147** corruption-related cases pending in the courts. Of these cases, **89** cases are either in progress or have been finalised, with **16** cases having trial dates, whilst for **52** cases trials have commenced. **21** cases have already been finalised.

These statistics do not indicate a country that is not taking the fight against corruption seriously. They show that arresting agents and prosecution agencies are busy at work. They also show that the courts are dealing with these cases actively when they are brought before them. It is necessary to make these remarks because the impression sometimes created is that there is no activity in courts in respect of

corruption cases. The cynical suggestion has been made that courts are involved in a conspiracy with the other State agents in the criminal justice system to release persons accused of corruption in what is called a “catch and release” phenomenon. When a person has been arrested, he or she is entitled to bail as of right unless there are compelling reasons not to grant bail. When a person accused of a crime is released on bail, this is a legal and constitutionally provided for process, not to be derogatively dismissed as a “*catch and release*” procedure. When a trial takes place, it is also a constitutional imperative that the suspect goes through a fair trial. Whether the person is ultimately convicted or acquitted, that is justice at work. A person who has gone through criminal proceedings and is ultimately acquitted cannot be said to be a “*catch and release*” case. The Constitution guarantees a fair criminal justice system. It does not guarantee a criminal justice system in which everyone who is prosecuted must be convicted even where there is no evidence. There cannot be public confidence in such a system. The so-called “*catch and release*” narrative ascribed to the courts has no legal and factual basis.

Admittedly, institutions in the criminal justice system need to ensure that cases of corruption are properly investigated, prosecuted and adjudicated upon and speedily finalised in the courts. The constitutional obligation is that all stakeholders in the justice delivery system must ensure that disputes brought for hearing and determination by the courts are resolved expeditiously. Tardiness and delays in the handling of cases are incidents that are contrary to the efficiency and effectiveness demanded of a justice delivery system.

Public confidence in the justice system is a goal of justice delivery. Members of the Judicial Service must always understand that the quality of the service rendered to court users is measured in terms of the outcomes of the conduct of the service provider. Members of the Judicial Service must always be conscious of what the public demands of them in the delivery of justice and the need to perform to those expectations. The public will, for example, have trust in the judicial processes where the registry and clerical staff attend to litigants with respect and promptness; where matters filed in the courts are processed with speed and the requisite skill; and where the staff shun corruption. The public will have confidence in the justice delivery system where

the halls of justice are clean and well equipped with modern equipment, where the resources are made readily available for the courts to perform their functions effectively, and where complaints made are thoroughly investigated and resolved without unreasonable delays.

Competence is the ability to do something well, to the expected standards with the requisite skill and knowledge. Every standard relating to the Judiciary can and ought to be traced back to the Constitution and the question of competence in the provision of judicial service is no exception. An explicit reference to this subject matter in relation to the performance of Judges is found in **section 187(b) of the Constitution**, which prescribes gross incompetence as one of the three grounds for removing Judges from office. This no doubt highlights the gravity of the issue of competence in relation to the duty of a Judge.

The legal underpinning for judicial competence is also provided for in **section 164 of the Constitution**, which emphasises judicial independence and the effectiveness of the courts. **Section 164(2)** expressly provides that the independence, impartiality and **effectiveness of the courts** are central to the rule of law and democratic

governance. The link between judicial competence and the effectiveness of the courts is thus established. Courts cannot be effective without competent and conscientious judicial officers manning them. An effective judiciary is one that is manned by competent judicial officers, in the sense of their being capable and able to act independently and impartially in the expeditious resolution of disputes before the courts. Competence as an essential feature of the performance of the judicial function underpins the quality of the service delivered. It also controls the perception the public has of the courts.

An incompetent Judiciary cannot enforce the rule of law, which is the hallmark of justice. The rule of law speaks to the equality of rights for everyone before the law. A common standard can only be achieved when the institution charged with the dispensation of justice is competent. Incompetence affects the Judiciary's democratic governance purpose, as its internal processes and norms and its interaction with other institutions are compromised.

It is important to note that the need for competence also extends to the supporting staff who assist Judges and magistrates in the execution of

their duties. Judicial officers do not dispense their duties in a vacuum. They rely on the support of the internal functionaries of the respective courts. Competence expected of the Judiciary therefore does not end with the Judges and magistrates themselves but extends to members of the support staff, such as registrars, researchers, clerks, interpreters, court recorders, ICT officers, e-filing officers, and members of the Office of the Sheriff. Competence as an essential feature of quality performance of the duties of office extends to members of the Judicial Service Commission Secretariat, such as accountants, training officers, administrators and procurement officers. Incompetent performance of duties by the non-judicial officers would result in failure to provide proper administrative support to the courts.

The Constitution recognises that competence does not only require one to satisfy the requisite educational and professional qualifications at the point of entry into a judicial office. After appointment, the need for continuous skills development is a constitutional requirement.

Based on the acceptance of the fact that competence is the state of having sufficient knowledge, judgment, and skill for a particular duty,

section 165(7) of the Constitution underscores the fact that the responsibility of ensuring that one has the requisite competence for properly performing one's duties also falls on the members of the Judiciary individually and collectively. In other words, the responsibility of ensuring that members of the Judiciary have the requisite competence for the proper performance of their duties does not fall on the institution alone but also with judges in their individual capacities. More particularly **Section 165(7) of the Constitution** provides:

"(7) Members of the judiciary must take reasonable steps to maintain and enhance their professional knowledge, skills and personal qualities, and in particular must keep themselves abreast of developments in domestic and international law."

Any service that the Judiciary provides must meet the standard outlined in the Constitution. In this regard, Zimbabwe's founding values and principles, which appear in **section 3**, stand as the basic standard undergirding the quality of service obtained from the courts. It provides for, amongst others, the rule of law, transparency, accountability and

good governance. These are the most important fundamental values that ensure quality in the services provided to the public.

Section 194 of the Constitution provides for the principles that define the parameters of the dynamics of the relationship between the exercise of power by any public institution in the administration of public affairs and public interest. Every public institution is to exercise public power in a manner that promotes -

- a high standard of professional ethics,
- efficient and economical use of resources,
- development-oriented public administration,
- the impartial, fair, equitable and unbiased provision of services,
- response to people's needs within a reasonable time,
- accountability to the people, and
- cooperation between institutions and agencies of government at all levels.

These values and principles have a bearing on the quality of service provided by the courts. If any of the services of the Judicial Service fall

below the standards established by the principles prescribed by the Constitution, the public may lose confidence in the justice delivery system. The Judiciary has taken steps to improve the quality of court processes and decisions, through training of judicial officers. Judicial *symposia* are frequently held, during which Judges discuss various issues to enhance and improve their judicial knowledge and skills. Judges have also participated in international conferences and workshops where they have shared experiences with counterparts within and outside the region. Training has been extended to magistrates through the **Judicial Training Institute of Zimbabwe**. In those training sessions magistrates participate in discussions of subject matters in areas of their work, such as human rights, sentencing, criminal and civil procedure, and judgment writing. Such training was done in order to comply with the constitutional imperative of providing quality service to the people.

It is fair comment to suggest that the performance of judicial officers is generally good. The common source of criticism received usually emanates from litigants who would have been unsuccessful in cases before the courts. The tendency is to blame lack of judicial competence

for the loss. At worst, such litigants allege corruption. Whilst the tendency to blame a judicial officer for a negative decision is understandable in the case of self-actors who may not be aware of the available legal remedies for redressing the perceived wrong, it becomes a cause of concern when a legal practitioner, who is an officer of court, is involved. It is regrettable conduct on the part of a legal practitioner to go on social media or to assemble a press conference to castigate a court decision or insult the presiding judicial officer because he or she made a decision against the legal practitioner's client. Whilst constructive and measured criticism of court decisions is welcome and encouraged as it adds value to jurisprudential development, no value is added to the justice delivery system from scandalous attacks on the integrity of judicial officers.

The focus on quality service by the Judiciary is not only directed at judicial officers but also at non-judicial members of staff. There should be a correlation of good conduct and efficient performance by both judicial and non-judicial members of staff in order for the Judiciary to fulfil its mandate as encapsulated in the Constitution.

It is in this respect that the Judicial Service Commission introduced the Integrated Electronic Case Management System (“the IECMS”) in the courts, on the basis of the belief that the digitisation of the courts would ensure the provision of quality service to the public.

The refurbishment and rehabilitation of courts being done by the Judicial Service Commission is another area that speaks to the need to provide smart, clean and well-equipped halls of justice that create a conducive environment for litigation. Most of the courts are now equipped with new and modern furniture.

Prompt response to inquiries by court users and efficient processing of files in the courts by the registrars and clerks is another area being worked on to enhance the quality of service provided. The time taken between the filing of a matter and setting it down for hearing has been remarkably reduced in the Constitutional Court and the Supreme Court. Previously, a matter filed in either of these courts would take up to three years or more to be heard. The time has now been reduced to between **six and nine** months for the matter to be set down, heard and finalised. This is the result of the efficiency now found in the registries of the two

courts. The intention is to have a matter set down, heard and finalised within **three to six** months of filing.

The Judicial Service Commission receives many complaints from members of the public, legal practitioners and other Government agencies during the course of the year. During the year under review, **322** grievances raised by persons who in one way or another had contact with the courts were received. The policy is that each complaint must be properly investigated and the complainant given feedback without delay. Whilst some of the complaints related to grievances against decisions made by the courts which can only be dealt with in terms of court processes, those that had merit were attended to and remedial action taken.

The Judiciary, through the Judicial Service Commission, has undertaken and will be pursuing several initiatives that are aimed at ensuring competence and improving the quality of service provided. These include the training of judicial officers and support staff, the digitisation of the courts, and the procurement of resources necessary for the proper administration of justice.

Serious concern has arisen in relation to the slow movement and finalisation of criminal matters especially murder cases. Statistics show that there is in excess of **one thousand murder cases** pending indictment to the High Court for trial. The attendant difficulties and anxiety experienced by the accused persons awaiting trial, complainants and witnesses who would want closure to cases, and members of the public with interest in the outcome of the trials cannot be ignored. Any lethargic approach in the disposition of criminal matters by stakeholders in the justice sector regrettably points to the incompetence of the system and erodes public confidence in the justice delivery system. It is important that all stakeholders in the criminal justice system, especially the Judiciary, the National Prosecuting Authority, the Zimbabwe Republic Police and the Law Society of Zimbabwe, perform their respective functions efficiently so that the unacceptable situation is eliminated.

In order to address the anomaly, it became necessary to set up a committee of persons constituted by representatives of stakeholder institutions in the criminal justice sector, known as the **National Council on the Administration of Criminal Justice**. The committee

comprises the Judge President of the High Court, the Acting Prosecutor-General, the Commissioner General of Police, the Commissioner General of the Zimbabwe Prisons and Correctional Services, the Chairperson of the Zimbabwe Anti-Corruption Commission, the Senior Judge of the High Court in Bulawayo, the Head of the Criminal Division of the Harare High Court, the Secretary of the Judicial Service Commission, the Chief Magistrate, and the Secretary of the Law Society of Zimbabwe. The rationale for the setting up of the committee is the fact that the finalisation of criminal cases is dependent on inter-institutional cooperation. Needless to say, one other reason for the development is the enhancement of public confidence in the criminal justice system. The criminal justice system represents the most basic form of the law and one of the essential means within the judicial system for the protection of fundamental human rights and freedoms. Under the Constitution, the criminal justice system is designed to guarantee the respect and protection of the rights of persons brought before the criminal courts.

The main objective of the committee is to ensure a coordinated, efficient, effective, and consultative approach in the administration and

reform of the criminal justice delivery system in Zimbabwe. The expectation is that the **committee** will provide effective solutions to ensure that the backlog of criminal cases is controlled and that the recurrence of the prevailing situation prevented.

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN. Still within the context of the area of the criminal justice system, allow me to comment on an important aspect, that of sentencing. After one is convicted of a criminal offence the next stage that the court will be seized with is consideration of the appropriate sentence to be imposed. The presiding judicial officer is charged with the mandate to assess the appropriate sentence, taking into account the gravity of the offence and the circumstances of the offender as well as the interests of society. Whilst this is a discretionary process on the part of the judicial officer, the courts often get criticised because of the disparity in the sentences imposed particularly, where the same criminal conduct is punished differently depending on the personal views of the presiding officer. The public will obviously lose confidence in a system where there is no consistency and uniformity in sentencing. This gave rise to the need

for the consideration and adoption of uniform sentencing guidelines in the absence of a codified sentencing regime.

The Legislature, cognisant of the existing inconsistencies in the sentencing of criminal offenders and because Zimbabwe does not have a codified sentencing system, enacted in 2016 **section 334A of the Criminal Procedure and Evidence Act [Chapter 9:07]**. This provision mandates the Judicial Service Commission to convene a sentencing conference, bringing together the Judiciary and other important stakeholders in the justice, law and order sector, as well as other bodies and institutions that have interest and expertise in crime, punishment, and rehabilitation or treatment of criminals. The sentencing conference, bringing together representatives of these bodies, was to meet and discuss objectives, policies, standards and criteria various for sentencing offenders and to formulate draft sentencing guidelines for submission to the Minister of Justice, Legal and Parliamentary Affairs for publication as regulations in terms of **section 389**.

A **Sentencing Conference Council** was set up to organise and manage the affairs of the Sentencing Conference. The Sentencing Conference

was convened and held from 5-7 December 2022. The discussions covered thematic areas aimed at –

- Promoting criminal justice by properly interrogating the sentencing objectives of rehabilitation, punishment, restoration and prevention, and setting appropriate guidelines for their application;
- Promoting consistency and transparency in sentencing through the development and revision of sentencing guidelines;
- Cultivating and entrenching public confidence in the sentencing process by improving public knowledge and understanding of sentencing processes and procedures, including among stakeholders, survivors, victims, witnesses, offenders as well as the general public.

The Sentencing Conference was attended by various players in Government and civic society. Draft sentencing guidelines were drawn up for presentation to the Judicial Service Commission, which will study them before submission to the Minister of Justice, Legal and Parliamentary Affairs.

The process will obviously bring about uniformity and consistency in the sentences imposed by the courts and, consequently, public confidence in the criminal justice system will be enhanced. It must be stressed that the sentencing guidelines do not represent a movement towards the adoption of what are routinely referred to as Tariff Sentences. Rather the guidelines provide a starting point during the sentencing procedure with the circumstances surrounding the commission of the offence, aggravating and mitigating features and other considerations all playing a part in the final determination of an appropriate sentence in any given case.

LAUNCH AND OPERATIONALISATION OF THE INTEGRATED ELECTRONIC CASE MANAGEMENT SYSTEM

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN.

The most important and far-reaching project undertaken during the course of the year was the launch of the IECMS in the courts, commonly known as “the digitisation of the courts”. The journey travelled up to implementation was as exhilarating as it was exhausting.

On 01 May 2022, after years of meticulous planning and laying the groundwork, the Judicial Service Commission successfully launched the IECMS. The digital platform is a web-based case management system that automates and tracks matters from their inception up until they are disposed of by the presiding judicial officers or attending court staff. To prevent a radical overhaul in the effective operation of the courts, the digitisation drive took a measured approach in which the operationalisation was done in phases, with the Constitutional Court, the Supreme Court and the Commercial Court Division of the High Court, known as the Commercial Court, being the first to benefit from the launch of the IECMS.

As a result, processes in the Constitutional Court and the Supreme Court transitioned from the traditional full-paper system to an online system consistent with developments in other jurisdictions. Pending matters within the registries were uploaded onto the platform's servers to ensure that Judges took part in the transitional process, with access to records and case files being provided digitally. The Commercial Court did not require any transition as its operations and processes were digitalised from inception. Instead, it was the duty of the Judges

selected to operate the newly established court electronically. The duties of the support staff were transformed as they adapted their functions to the demands of the IECMS platform. All the three courts have been conducting virtual hearings through the system without the need for parties or their legal practitioners to be physically present in the courts. The migration from the conventional means of judicial operation has been a resounding success in the courts under Phase One. The response by all stakeholders has been positive and it can safely be said that the future looks bright.

As at **31 December 2022**, a total of **1 574** cases had been registered in the system for the three courts, of which **494** virtual court sessions successfully took place. Currently there are **5 877** IECMS registered users, of whom **758** are law firms, **2 522** are legal practitioners and the rest are members of the public.

Since 2018 the nation has been advised of the advantages of digitising the courts. Besides keeping abreast with developments in the region and the world over, the integrated electronic management of court processes enhances transparency, accountability, efficiency,

accessibility of justice, and fights corruption, amongst other advantages. Limitations to access to justice, such as distance, transport costs and delays, have been eliminated, with legal practitioners and litigants being able to attend court sessions through the IECMS platform promptly. The knock-on effect experienced has been the reduction in litigation costs, which is in the contemplation of the Judicial Service Commission as it strives to ensure that access to justice does not become the preserve of the wealthy to the exclusion of poor, vulnerable and marginalised members of society.

To this end, e-filing offices have been established, manned by e-filing officers, at every court station in the country. Where one does not have the required gadget, internet access or any other equipment required for purposes of filing a process or participating in a virtual hearing, one only needs to visit the nearest court to one's home or office where all the equipment including internet will be available for one's use for free and trained e-filing officers will assist with the filing of one's matter.

A 24 Hour Call Centre, manned by trained **Call-Centre officers** who attend to inquiries instantly, has been established. An on-line **Help-Desk** has also been introduced within the system where one can chat or

send emails with any questions or inquiries on any issue relating to the use and application of the system. Help is again readily available. Between 01 May and 31 December 2022 **559** calls were received by the **Call-Centre** and **1 166** inquiries went through the **Help-Desk** platform. Members of the public, litigants and legal practitioners are urged to make use of these platforms, which are intended to assist in navigating through the system. The **Call-Centre** and help desk details are available on request.

The IECMS has ensured that the duties of the various actors in the judicial system, such as registrars and their subordinates, are tracked with time stamps detailing the exact dates and times of action. Litigants can now view the status and progress of their cases without relying solely on the word of their legal practitioner or the sometimes curt responses of court staff. Conversely the ability of court staff to go on frolics of their own while neglecting their duties has been restricted by the accountability features of the digital platform.

The Judicial Service Commission Secretariat now employs a total of **215** personnel in the ICT department, run by the Head of ICT assisted

by two deputies, with one of the deputies specifically in charge of the digitisation of the courts. The remaining personnel are software developers, front and backend business intelligence officers, cyber security officers, data center engineers, data engineers, systems analysts, hardware and network engineers, virtual court officers, statisticians, court recorders, ICT officers, help-desk administrators, call-center officers, e-filing officers, librarians and transcribers.

The digitisation of the courts is here to stay. The target is to have all the courts digitised. The Government, through Treasury, has expended a significant amount of money to have the IECMS put in place in the courts. It is imperative that all stakeholders co-operate and constructively contribute to the success of the implementation of the system. It is now intended to move to **Phase Two** of the implementation of the IECMS, with the **Labour Court and the Administrative Court going digital on 01 February 2023**.

The successful implementation of the digitisation of the courts in Zimbabwe has been a success story in the region. Counterparts from

the region have been coming to get information on how the implementation of the IECMS was carried out.

COMMISSIONING OF THE LUPANE MAGISTRATES' COURT

In furtherance of the implementation matrix of the Judicial Service Commission's 2021–2025 Strategic Plan, the past year also witnessed, after the Commercial Division of the High Court, the commissioning of the new Lupane Magistrates' Court on 30 September 2022. The official opening of the court was testimony to the continued transformation of court infrastructure in line with the policy of the Judicial Service Commission of putting in place measures to ensure easy access to justice for everyone. The event was significant because previously the facilities used by the Magistrates' Court sitting at Lupane were three offices belonging to the District Development Coordinator. Court operations were stifled, as both the judicial officers and the support staff members worked in an unattractive environment that did not inspire public confidence in the Judiciary. This in turn affected the ability to perform their duties efficiently.

It must be noted that, despite this notable achievement, there is still scope for improvement in Matabeleland North Province. This is observable from the fact that, at present, the Province has only four operational magistrates' court stations. These are located in Victoria Falls, Hwange, Binga and the recently commissioned Lupane court complex. The stations are wholly insufficient to fully accommodate the interests of the large population located in the Province. The people in the Province are having to travel long distances to access the nearest court. This is not ideal. In this regard, the Judicial Service Commission is considering opening resident magistrates' courts at places such as Dete and Kamativi. Consideration is also being given to the establishment of a court at Nkayi.

On a related note, the Judicial Service Commission continued with its development programme by the resumption of construction at the Gwanda Magistrates' Court Complex in May 2022. This was after a decade long hiatus due to budgetary constraints. The anticipated commissioning of the facility in 2023 will alleviate the institutional challenges being experienced at the station. At present, the entire court station relies on three courtrooms to service all its functions.

The reason for outlining the ongoing projects is to reinforce the fact that the Judiciary relies on financial support from Government to be able to deliver on its mandate. The success stories in respect of commissioning of the Commercial Division of the High Court of Zimbabwe to the new court house at Lupane in Matabeleland North that were recorded in 2022 would not have been possible without the support of the Ministry of Finance and the Ministry of Local Government and Public Works.

It is crucial that this partnership continues, as the Judiciary is committed to the successful implementation of the National Development Strategy 1 (“NDS1”) being pursued by the Government.

The Ministry responsible for Information Technology continues to play an important role in supporting the Judiciary’s digitisation drive. The Judicial Service Commission Secretariat has already initiated engagements with the Ministry to see how it can provide support in the advancement and realisation of the benefits of the digitisation programme, especially in townships and rural areas, in the areas of the provision of equipment and reliable internet services.

Over the last two years the vision of the Judicial Service Commission to build magistrates' courts in the major townships throughout the country has been shared with the nation. The nation has previously been updated on the progress made and the challenges the Judicial Service Commission has faced in making the vision a reality. Land has been made available in municipal areas where the Judicial Service Commission intends to construct courts, especially in the urban townships. One of such courts to be opened at Epworth is almost ready for occupation. The construction of the courthouse is finished. Work on the ambiance and the furnishing of the court is now in progress. The court will be opened in the first quarter of this year.

FUNDING CONSTRAINTS

The importance of adequately funding the Judiciary cannot be over-emphasised, as it impacts directly on the rule of law. Funding constraints impact negatively on competence and quality of service in the Judiciary which depend on the availability of commensurate resources. Although the Judicial Service Commission is grateful for the funding received during the period under review, it is undesirable for

the Judiciary to be placed in a position in which it has to beseech Treasury to avail funds for its operations, particularly when appropriation of the budgeted funds would have been approved by Parliament. As suggested in previous addresses at the opening of the legal year, block releases of funds on a quarterly basis may be the best solution to the problem.

PERFORMANCE OF THE COURTS IN MANICALAND PROVINCE

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN. On a similar occasion last year, my colleague, Justice Makarau commended both the High Court here at Mutare and the Magistrates Courts in Manicaland for performing above expectations, notwithstanding the fact that court operations, like other operations at the time, had been adversely affected by the COVID-19 pandemic. She noted that the High Court had achieved a 99% clearance rate in the Criminal Division. She also noted that the Regional Court had performed very well, registering an 85% clearance rate whilst the Provincial Court had achieved a 91% clearance in criminal cases.

I am pleased to note that the good work that the courts in this province have been doing has continued. In the Civil Division of the High Court, despite a 70% increase in the workload, the year 2022 witnessed a 100% clearance rate. The Criminal Division also achieved a 100% clearance rate. As regards the Magistrates Court, the backlog in criminal cases was reduced to 638 from an opening balance of 762 cases. The reduction was the result of hard work on the part of the magistrates in the province and the offloading of all cases that warranted the jurisdiction of the Regional Court. That offloading unfortunately led to an increase in the number of cases before that court. Despite this however, the Regional Court, Eastern Division managed to complete 933 cases, having commenced the year with 858 cases.

I think it is fair comment to suggest that all the courts in the province have done very well during the last twelve months and for this achievement, they deserve a special commendation. No doubt the feat is the result of hard work on the part of all concerned, namely judges, magistrates, prosecutors, court staff and the other agencies that are part

of the justice delivery system. I take this opportunity to encourage all of you to continue on this positive trajectory.

BY WAY OF CONCLUSION

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN

The nation is due to hold harmonised elections later in the year. The Constitution makes it very clear that every citizen is entitled to peaceful, free and fair elections. The obligation is therefore on all the political parties, the candidates and their agents to ensure that conditions conducive for the holding of peaceful, free and fair harmonised elections are created and maintained. As the Judiciary, we expect the rule of law to prevail, especially in the coming months when political parties start their campaigns. This is the only way that will ensure that the elections are free, fair and credible. Let us all remember that in the exercise of our fundamental rights and freedoms, other people also have similar rights. In the enjoyment of those rights, we should always pay due regard to the rights and freedom of others.

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN. The Judiciary as an institution takes this opportunity to acknowledge the support it received from key stakeholders in the justice delivery system, namely the Ministry of Justice, Legal and Parliamentary Affairs, the Ministry of Finance and Economic Development, the Ministry of Local Government and Public Works, the Law Society of Zimbabwe, the National Prosecuting Authority, the Office of the Attorney-General, the Zimbabwe Prisons and Correctional Service, the Zimbabwe Republic Police, the UNDP, and various other non-governmental organisations who partnered with the Judicial Service in a number of initiatives during the course of 2022. It is hoped that such cooperation will continue in 2023.

I thank you all for attending this year's Opening Ceremony. It is a very important day on the calendar of the judiciary. It is now my singular honour to declare the 2023 Legal Year in Mutare officially opened.

Before this formal session comes to end, I call upon Bishop Madiye from the Methodist Church in Zimbabwe to lead us in prayer and ask for God's blessings as we, yet again, commence the 2023 legal year. I request that we all stand for the prayers. Immediately after the prayer the court will then adjourn.

I THANK YOU ALL.